

**PATENT**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**( Case No. 00-505-B )**

<b>In the Application of:</b>	)	
	)	
<b>Progulske-Fox <i>et al.</i></b>	)	
	)	<b>Examiner: Steele</b>
<b>Serial No.: 09/980,845</b>	)	
	)	<b>Group Art Unit: 1639</b>
<b>Filing Date: April 8, 2002</b>	)	
	)	<b>Confirmation No. 3701</b>
<b>For: Microbial Polynucleotides Expressed</b>	)	
<b>During Infection of a Host</b>	)	
	)	

Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

**PETITION UNDER 37 C.F.R. § 1.182**  
**REQUEST FOR WITHDRAWAL OF TERMINAL DISCLAIMER**

This Petition is filed in response to the Office Action issued on April 23, 2009, in the above-mentioned application. The appropriate fee under § 1.17(f) is filed herewith. If another fee is due the Commissioner is authorized to charge our deposit account 13-2490.

On February 17, 2009, a Final Office Action was issued in the above-mentioned application. The only rejection made in the Final Office Action was a non-statutory obviousness-type double patenting rejection of claims 1-17 over claims 1-11 of U.S. Pat. No. 7,033,748.

On April 10, 2009, Applicants filed a response to the Final Office Action. The response included a Terminal Disclaimer of U.S. Pat. No. 7,033,748.

Surprisingly, on April 23, 2009, a non-final Office Action was issued with a multitude of new grounds of rejection.

Because the claims of the instant application are not presently in condition for allowance and may require additional amendments that may remove the necessity of a Terminal Disclaimer over U.S. Pat. No. 7,033,748, Applicants respectfully request the

withdrawal of the Terminal Disclaimer. According to MPEP § 1490 “there is no statutory prohibition against nullifying or otherwise canceling the effect of a recorded terminal disclaimer which was erroneously filed before the patent issues. Because the terminal disclaimer would not take effect until the patent is granted, and the public has not had the opportunity to rely on the terminal disclaimer, relief from this unhappy circumstance may be available by way of petition.”

The filing of the Terminal Disclaimer in this application was erroneous because the Applicants filed the Terminal Disclaimer in reliance upon the Office’s indication that other than the non-statutory obviousness-type double patenting rejection of claims 1-17 over claims 1-11 of U.S. Pat. No. 7,033,748, the application was in condition for allowance. This was not the case since new grounds of rejection were made after the filing of the Terminal Disclaimer.

Applicants respectfully request the withdrawal of the Terminal Disclaimer filed on April 10, 2009.

Respectfully submitted,

Dated: July 23, 2009

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217-239-1962